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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

BRUNO CERVANTES,

Defendant and Appellant.

B220066

(Los Angeles County
Super. Ct. No. BA347679)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Dennis J. Landin, Judge. Affirmed.

Katharine E. Greenebaum, under appointment by the Court of Appeal, for
Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Bruno Cervantes appeals from the judgment entered following his plea of no contest to possession for sale of heroin (Health & Saf. Code, § 11351). The trial court sentenced Cervantes to two years in state prison. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

*1. Facts.*¹

On the afternoon of October 11, 2008, Los Angeles Police Officer Jorge Trejo was at the intersection of 7th Street and San Pedro in the City of Los Angeles. Trejo had previously spoken with another officer, Guillermo Avila, who had informed Trejo that he had had a phone conversation with Cervantes during which Cervantes had agreed to sell to Avila four packs of heroin.² Cervantes and Avila were to meet in the area near 7th Street and San Pedro.

At approximately 2:30 p.m., Avila contacted Cervantes and inquired about his whereabouts. Cervantes told Avila that he would be getting off the bus soon. Shortly after that conversation, Avila again contacted Cervantes, who indicated that he was on 7th Street, walking toward Crocker. In a final call to Cervantes, Avila saw him answer the phone. Avila was certain Cervantes was the same person he had previously spoken with because he recognized the voice.

¹ The facts have been taken from the transcript of the preliminary hearing.

² A “ ‘pack’ ” is street terminology for 12 or 13 balloons of heroin packaged in a single bag.

Avila identified Cervantes, who was walking down the street accompanied by his son. Trejo and Los Angeles Police Officer Thomas Brown detained Cervantes and recovered from him a cell phone. Avila verified that it was the same phone he had been calling. Officer Brown then searched Cervantes and found in his possession two clear bags, each of which contained approximately 12 multi-colored balloons. Each balloon contained an “off-brown solid resembling heroin.” The officer also recovered a wallet which contained \$139 in cash.

Based on the conversations that Officer Avila had with him, the amount of heroin packaged in the balloons and that Cervantes did not possess any paraphernalia with which to ingest the heroin, Officer Trejo was of the opinion the drug was possessed for sale.

The parties stipulated that on October 14, 2008, Chemist Chiquillo examined a balloon recovered from Cervantes and determined that it contained 1.97 grams of a substance containing heroin.

2. Procedural history.

a. The information.

Cervantes was charged by information filed November 13, 2008 with one count of possession for sale of a controlled substance in violation of Health and Safety Code section 11351. It was further alleged that Cervantes had served five prison terms within the meaning of Penal Code section 667.5, subdivision (b) and that he previously had been convicted of Health and Safety Code section 11351 within the meaning of Health and Safety Code section 11370.2, subdivision (a).

b. *The Pitchess*³ motion.

On March 3, 2009, counsel for Cervantes made a *Pitchess* motion requesting “[a]ll complaints from any and all sources relating to acts of aggressive behavior, violence, excessive force, or attempted violence or excessive [force], racial bias, . . . fabrication of evidence, . . . [or] dishonesty” The trial court “grant[ed] the request to the extent it [sought] information regarding fabrication, false statements or perjury on the part of Officer Trejo [and Officer Avila].”

On April 7, 2009, the trial court held an in-camera hearing regarding complaints made against the officers. As to Officer Avila, the court determined that several “open” complaints involving allegations of planting evidence, falsifying a police report, manufacturing evidence, making false statements during an arrest, stealing an arrestee’s money, engaging in racial profiling, making racial comments, attempting to get false statements from a complainant and making false arrests were relevant to Cervantes’s case and ordered them disclosed to the defense.

c. *The motion to suppress evidence.*

Counsel for Cervantes made a motion to suppress evidence pursuant to Penal Code section 1538.5. At the hearing held on the matter, Los Angeles Police Officer Guillermo Avila testified that on October 11, 2008, he had been working the “narcotics enforcement detail.” Avila had received an “anonymous complaint regarding an individual selling heroin in the area of 7th and San Pedro.” The informant gave to Avila a phone number

³ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

which he could call to order the heroin. The drug would then be delivered at the corner of 7th and San Pedro. When Avila called the phone number, a male answered. Avila stated: “ ‘Hey, what’s going on? Can you bring me a four packs to 7th and San Pedro?’ ” After the individual asked who was calling, he and Avila agreed to meet. Avila was to call the individual, who identified himself as “ ‘Bruno,’ ” one and one-half hours later. When Avila called back, he recognized the voice as that of the man he had spoken with earlier. The man, who was later identified as Cervantes, told Avila that he was on the bus and “[would] be downtown shortly.”

Avila advised other members of the narcotics unit of his phone conversations and told them that, although he did not know what the individual looked like, he would be at 7th and San Pedro to deliver four packs of heroin. Approximately 10 minutes later, Avila, who had gone to the area near 7th and San Pedro, again called Cervantes. Cervantes answered and advised Avila that he was on 7th Street at San Pedro walking toward Crocker. Avila observed two individuals, who appeared to be together, walking toward Crocker.⁴ One of the two men was talking on a cell phone. After ending the call to Cervantes, Avila advised the other officers in the area that he had observed the man they had been waiting for. He then again called Cervantes “to verify” that he was the individual with whom he had previously spoken.

⁴ Cervantes was accompanied by his son, who appeared to be 18 or 19 years old.

Cervantes was taken into custody and handcuffed. Avila arrived a short time later and called Cervantes's number one more time to be certain that it was the number of the individual he had been negotiating the narcotics transaction with. When Avila called the number, Cervantes's phone rang.

After hearing argument by the parties, the trial court determined "there was probable cause for the arrest" of Cervantes. Accordingly, the court denied Cervantes's motion to suppress the evidence found as a result of the search of his person when he was taken into custody.

d. *The plea.*

At proceedings held on June 15, 2009, counsel for Cervantes informed the trial court that he and the district attorney had negotiated a plea agreement under the terms of which Cervantes would plead no contest in exchange for a sentence of two years in state prison. After waiving his right to a trial, his right to confront and cross-examine the witnesses against him, his right to subpoena witnesses in his defense and his privilege against self-incrimination, Cervantes pleaded no contest to possession for sale of a controlled substance, heroin, in violation of Health and Safety Code section 11351.

Cervantes was sentenced on October 13, 2009. In accordance with the agreement between the parties, the trial court sentenced Cervantes to the low term of two years in state prison. Cervantes was awarded presentence custody credit for 367 days actually served and 183 days of good time/work time, for a total of 550 days. He was ordered to pay a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)), a \$50 lab fee (Health & Saf. Code, § 11372.5, subd. (a)), a \$30 court security fee (Pen. Code, § 1465.8, subd. (a)(1)), a

\$30 criminal conviction assessment fee (Gov. Code, § 70373), and a suspended \$200 parole revocation restitution fine (Pen. Code, § 1202.45). On the People's motion, all remaining counts and allegations were dismissed.

Cervantes timely filed a notice of appeal on October 22, 2009.

This court appointed counsel to represent Cervantes on appeal on December 30, 2009.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record.

By notice filed April 2, 2010, the clerk of this court advised Cervantes to submit within 30 days any contentions, grounds of appeal or arguments he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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CROSKEY, J.

We concur:

KLEIN, P. J.

KITCHING, J.